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IN THE
SUPREME COURT OF THE UNITED STATES

SPRING TERM 1993

JERRY G. CARTER,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Was not the denial by the District Court and affirmation of such denial by the Second Circuit of Petitioner's 28 U.S.C. @ 2255 based upon the recanted testimony of government informant/witness Robert Stadel a deprivation of rights protected by the due process clause of the Fifth Amendment and/or in contradiction to this Court's ruling in United States v. Jacobson, ___ U.S. ___, 112 S. Ct. 1535 (1992)?

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STATEMENT OF JURISDICTION

On January 24, 1991 Petitioner invoked the jurisdiction of the United States District Court by filing a 28 U.S.C. @ 2255 seeking to overturn his 1984 narcotics conviction. This petition was denied by the District Court on February 15, 1992 (Appendix, p. 1-2). Appeal was taken to the United States Court of Appeals for the Second Circuit. On September 2, 1992 the Second Circuit issued an ORDER denying Petitioner's appeal (Appendix, p. 3-5). A PETITION FOR REHEARING AND PETITION FOR REHEARING ENBANC was filed by Petitioner. This petition was denied by ORDER issued on October 26, 1992 (Appendix, p. 6-7).

This petition has been filed within 90 days of the denial and the Supreme Court of the United States has been granted jurisdiction pursuant to 28 U.S.C. @ 1254.

All orders, mandates, etc. referenced herein are included in the Appendix. Throughout this writ, "Tr" with

roman numerals following, are references to the volume and page of the trial transcript. Where "HT" followed by a page number is referenced, it means the October 29, 1985 hearing and is found in the Appendix in original numerical form.

CONSTITUTIONAL PROVISION

The constitutional provision brought into question in this case is the application of the due process clause of the Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

1. PREVIOUS PROCEEDINGS

On May 11, 1983 the Grand Jury for the Western District of New York returned a five (5) count indictment charging Petitioner Jerry Carter (Carter), along with co-defendants, with conspiracy to distribute cocaine, 21 U.S.C. @ 841 (a)(1) and 21 U.S.C. @ 846 (Count 1) and for possession of cocaine with intent to distribute, 21 U.S.C. @ 841 (a) and 18 U.S.C. 2 (Count 2). Carter was also charged with two counts of using a telephone to facilitate the distribution of cocaine, 21 U.S.C. @ 843 (b) (Cts 3 & 5).

A jury trial was held from January 16, 1984 thru February 3, 1984 when the jury returned a verdict of guilty against all defendants on all counts. Appeal was filed asserting Jenks and Brady violations. The conviction was affirmed. United States v. Paternina-Vergara, 749 F2d 993 (2 Cir. Nov. 30, 1984), cert. denied, 469 U.S. 1217 (1985).

Carter was sentenced on May 9, 1984 and began serving his sentence on February 7, 1985.

On June 13, 1985 Carter filed a Rule 35 motion for reduction of sentence. On July 1, 1985, informant and key government witness Robert Stadel, voluntarily sought out and provided a sworn affidavit to Carter's Rule 35 counsel. (App., 8-10). On October 29, 1985 a hearing was held on Carter's Rule 35. Stadel testified at this hearing. The Rule 35 was denied on December 9, 1985.

On January 20, 1987 Carter filed a Rule 33 motion for a new trial. The motion was denied on October 20, 1987. Appeal was taken and denied. United States v. Carter, 847 F.2d 837 (2d Cir 1988). On February 15, 1991 Carter filed a petition pursuant to 28 U.S.C. @ 2255. Denial was issued on February 20, 1992. Appeal was taken and denied on September 2, 1992. Carter filed for rehearing and the same was denied on October 26, 1992.

2. THE TRIAL

A. OVERVIEW

In a jury trial from January 16, 1984 thru February 3, 1984, District Judge John T. Curtin presiding, the government's principal evidence against Carter was the testimony of paid government informant, Robert Stadel (Stadel), and tape recorded conversations Stadel had with Carter. The government also presented testimony from law enforcement agents of the United States Drug Enforcement Agency (DEA) and the Canadian Royal Mounted Police (RCMP). Carter's defense was entrapment. He testified in his own defense.

The present controversy centers on information provided by the voluntary testimony of government informant Robert Stadel at a Rule 35 reduction of sentence hearing on October 29, 1985. This hearing was twenty (20) months after the end of the trial and one (1) year after decision was rendered in the original appeal. During the

course of this hearing, Robert Stadel, presumably for conscience sake, provided testimony which recanted his trial testimony and established Carter's entrapment defense.

There are two major points, significant to the due process entrapment defense, in which Stadel recanted his trial testimony and collaborated Carter's testimony regarding entrapment. First, Carter testified at trial that Stadel had coached him about what to say regarding narcotics to an undercover RCMP officer at the first meeting in Toronto on March 12, 1982. At trial, Stadel testified that Carter initiated and provided the information about the purity, price and quantity of cocaine. On October 29, 1985 Stadel, refuting his own trial testimony, informed the Court that it was indeed he who coached Carter about what to say.

The second instance was the documentation which was presented to the jury which falsely accused Carter of previous involvement in illegal drug activity. This

documentation came via Stadel's conversations with the RCMP and DEA. On four occasions during the October 29, 1985 hearing Stadel denied that the information on these documents were true and, in fact, testified that false information was supplied to him by the DEA. Carter had testified at trial that he had never been involved in any illegal drug activity and had no predisposition to do so. Carter's testimony was the truth.

At trial the jury, while considering Carter's entrapment defense, was faced with contradicting testimony about Carter's previous background and ready participation and organization of the activity of which he had been charged. Stadel's truthful testimony given at the October 29, 1985 hearing would have removed the contradiction created by his testimony. In fact, Stadel's truthful testimony would have been Carter's greatest asset because it fully supported Carter's due process entrapment defense.

B. FACTUAL BACKGROUND

MARCH 1982 - AUGUST 1982

During early 1982, Carter was in partnership with Kenneth Brown in Alabama (Tr. IX, 84-85). Prior to this partnership, Carter had attended Florence State University in North Alabama. Through the son of an associate he met at school he was introduced to the Ganen family of Miami. After his college days ended in the early 70's, Carter worked at a car rental agency owned by the Ganen family near Miami before returning to the family farm near Cullman, Alabama (Tr. IX, 80-83).

In early 1982, Robert Stadel, Canadian citizen residing in Toronto, worked as a broker in oil, gas and commodities in partnership with Fred Colson, Sr. They were selling an oil field project in Ohio. Stadel had been introduced to Juan Ganen (Ganen) of Miami by Bobby Colson, nephew of Stadel's partner Fred Colson. Stadel solicited Ganen to invest in the Ohio oil field. (Tr. IV,

47-52)

Stadel approached Ganen about investing in the Ohio oil fields in early 1982. Ganen called Carter to perform "due diligence" on the project. The Carter and Ganen families had maintained contact over the years and Ganen was aware of Carter's oil investment activities. In March of 1982 Carter and Brown went to the oil fields near Columbus, Ohio to review the project. They then went to Miami and reported to Ganen, with Stadel present, that the deal was not favorable. (Tr. IX, 85-86)

Because of mutual interests discovered during the oil field project, the two partnerships decided to pursue other deals together which were potentially worth substantial sums of money. (Tr. IX, 87-106) Meetings to discussed these deals were held in Canada and the United States. Carter and Stadel testified that they became close friends.

Stadel testified regarding Carter's loyalty to their

relationship:

> "Jerry was very honorable. He had a very strong allegiance toward our partnership, even though it was -- we had just a tacit agreement on most things. I'd send him away on a deal, one of our largest deals, and when someone tried to backstab me on the deal, he called from down south to let me know what was going on, to keep me posted when he could have picked up the money himself. It was just a situation that got messed up, and drew him and he trusted me, . . ."
>
> (App., HT, 14-15)

D.E.A. Special Agent Kenneth Peterson from Buffalo, New York testified at trial about the Carter/Stadel relationship:

> Q. I see. Now is it not so that the success of the case, as you perceive it, meaning the arrest, was due in most all parts to the close personal relationship between Stadel and Carter?
>
> A. **Yes, sir.**
>
> Q. And was that as you understood it because Mr. Stadel said he was friendly and close to Carter?
>
> A. Yes, sir. Part of it, yes.

Q. And had a business relationship with him?

A. Yes, sir.
(Tr. VIII, 42-43; Emp. added)

Robert Joura, D.E.A. resident agent in charge of the Buffalo office agreed. His report, seeking a reward for Stadel after Carter's arrest, states:

> ". . .The success of this case was due in no small part to the close personal relationship between the informant and Defendant Jerry Carter which made it essential for SC2-83-0013 to be present during all undercover contacts."
> (App., p. 12)

During the first week of August, 1982, Carter and Brown went to Toronto to meet with Stadel on a commodities venture. Stadel, at the October 29, 1985 hearing, testifies about an event that occurred while Carter and Brown were there:

> ". . . Jerry Carter and his associate came up on a commodities venture that we were working on into Toronto, and Bobby Colson only assumed that because he had heard about Jerry Carter and Juan Ganen knowing each other that we were doing some kind of

a deal, and he went around and took my associate, Fred Colson, who was Bobby Colson's uncle, and pinned him up against the wall of a hotel and threatened his life, and came around with a pair of sissors the next morning into a restaurant and threatened my life, and threatened the life of my wife and baby."

(App., HT, 10-11)

Carter and Brown testified that during this trip, while they were having breakfast with Stadel at the Prince Hotel in Toronto, Stadel asked them to intervene with Juan Ganen to supply cocaine to Stadel. Carter and Brown refused. (Tr. IX, 65-67, 106-107; Affidavit of Brown)

Bobby Colson, the man who introduced Stadel to Ganen prior to Stadel meeting Carter and who threatened Stadel in early August of 1982, had, at some previous point in time, informed Stadel that Ganen was involved in drugs but never mentioned Carter because Colson did not know him. (App., HT, 9-10) In fact, Stadel testified at trial that during this same August after the confrontation with Bobby Colson, he had solicited and received cocaine from Ganen

in Miami without incurring cost for it. (Tr. V, 179-180)

SEPTEMBER 1982 - FEBRUARY 24 1983

In September of 1982 Stadel visited Alabama. While in route from Birmingham to Cullman, Stadel, according to Carter, requested that Carter induce Ganen to provide him with cocaine. A request Carter refused. (Tr. IX, 108-109) Stadel solicited Carter on another occasion. Carter refused.

Stadel went to Miami in early February, 1983 attempting to induce Ganen to supply him cocaine. (Tr. IV, 75-76) Stadel testified that Ganen called Carter and Carter did not want to discuss the matter. (App., HT, 9-12, 30)

On February 17, 1983, upon Stadel's return to Toronto from the failed Miami cocaine venture, he went to one time neighbor, RCMP Corporal Will Huntly, for the alleged purpose of securing protection from Bobby Colson. (Tr. IV, 55, 56, 72, 73) Stadel states that Corporal Huntly mentioned relocation away from Bobby Colson at least

three times during this meeting. (App., HT, 30-31) He says:

> ". . . on my initial conversations with the Royal Canadian Mounted Police, the first thing mentioned with this was relocation, and I knew that my salvation away from Bobby Colson was relocation, and when I couldn't get to Juan Ganen and he trusted Jerry Carter's opinion about me, that was the only route that I could go was to go through Jerry Carter."
>
> (App., HT, 13-14, 31)

One can only speculate, from the facts revealed, as to Stadel's reason(s) in attempting to "cut a deal" with Ganen for cocaine. However, Stadel's financial condition may well provide an essential clue. In 1980 and 81' Stadel's annual income was around $60-70 thousand a year. By 1982 he began to go downhill financially and by fall of 82' he was surviving off of credit cards supplied chiefly by his partner Fred Colson. In fact, by August of 1982 Stadel's situation had become "desperate" and he was over $600,000 in debt. (Tr. IV, 57-58, 88-90; App., HT, 4-5)

After this February 17, 1983 meeting, Stadel met

RCMP Corporal Lowe (Lowe) in Toronto on February 18, 1983. During the course of this meeting Stadel informed the RCMP that he was "very insolvent" and requested expense money. (Tr. III, 57) After Corporal Lowe's meeting with Stadel, Stadel was introduced to RCMP Corporal Gerald Froud (Froud) on February 21, 1983 at the Holiday Inn in Toronto. Stadel met with RCMP and DEA agents on February 22, 1983 in Toronto. RCMP Lowe and Froud testified at trial that it was decided Stadel was to approach Carter with the idea of inducing Ganen into a cocaine deal since Ganen would not deal with Stadel. (Tr. III, 56-57, 146-150) Stadel testified that it was the RCMP who suggested the approach to Carter since Ganen would not deal with him (App., HT, 4-5, 31). RCMP Corporal Lowe, in a written report, stated that when the RCMP suggested they target Carter, Stadel was "reluctant at first but then agreed it would be the best way to approach this." (App., 11)

During these series of meetings the RCMP and the DEA testified that they were aware of Stadel's acute financial problems and within one or two weeks the RCMP began picking up the expense tab for Stadel's "rent, food, that type of thing". (Tr. III, 14, 22, 29, 153) These RCMP payments were Stadel's lifeline to basic life necessities for himself and his wife and children. Stadel represented that obtaining money was a primary motive for going to the RCMP. (App., HT, 4-5; 30-31) The RCMP and DEA informed Stadel during these meetings that a contingency award was possible depending upon the "success" of case. (Tr. III, 26, 29-35; Tr. VII, 46-47; Tr. VIII, 104-5, 131-134) In fact, the RCMP and DEA would not get financial committed to the project until after Stadel had implemented the plan they had sponsored to Stadel. (App., 11-15, Reports of RCMP and DEA) Stadel, at the close of trial, was eventually paid some $45,000.00 for his participation.

According to reports by RCMP Lowe and DEA Agent James Robinson, Stadel informed them during these meetings that Carter was a multi-kilo cocaine dealer for the Ganen organization (App., 11-15). These reports were introduced at trial and the court refused to allow Stadel to be called back for cross-examination on the contents of these documents. However, at the October 29, 1985 hearing, Stadel himself refuted the content of these documents on four (4) different occasions by stating that he had known Carter for about a year by the time of these meeting and that he knew Carter never to be involved with drugs. (App., HT, 4, 7, 23, 26) Carter never had the benefit of this testimony before the jury and, contrary to the reports of the RCMP and DEA and shocking to AUSA Murphy, Stadel testified on October 29, 1985 that the information about Carter's alleged drug history came from DEA agents after Stadel was involved as an informant. (App., HT, 25-26)

On February 24, 1983, while wired for recording with Lowe and Froud present, Stadel called Carter to solicit Carter's involvement in a cocaine deal. Carter's initial reaction was a pause, he was reluctant. (App., HT, 9-12, 30) Through persuasion and threats of business loss, Stadel managed to prevail on Carter to come to Toronto for a meeting on March 12, 1983.

MARCH 12, 1983

On March 12, 1983 Carter arrived in Toronto. That night Stadel, who was wired, and Carter met with RCMP Froud -- alias, "Nick Dasti" and discussed cocaine. This meeting was recorded and played to the jury. At trial Stadel testified that it was Carter who assured them that the proposed cocaine was to cost $46,000 a kilo and be 87% pure. (Tr. IV, 71) Carter testified before the jury that the information he passed on about the cocaine was given him by Stadel prior to the meeting with "Nick Dasti". (Tr. IX,

122) Nearly two years later, at the October 29, 1985 hearing, Stadel refutes his earlier testimony and confirms Carter's trial testimony when he told AUSA Matthew Murphy and the Court that he was "the one that put the figures into Carter's mouth." (App., HT, 27-28) In fact, Stadel testified on October 29, 1985 that he was responsible for engineering the "tapes", "conversations", "everything" -- "the way things appeared to be were the way I engineered them". (App., HT, 8) An exact reflection of Carter's testimony at trial.

REASONS FOR GRANTING THE WRIT

I.

In its ORDER of September 2, 1992 the Circuit Court, after reviewing the previous proceedings of this case, disposed of Carter's appeal by stating:

> Carter's current claim is that the Government's actions in affording him an opportunity to commit the offenses constitutes outrageous conduct barred by the Due Process Clause. Whether or not this contention was comprehended within his prior challenges, it is not available for consideration on this collateral attack because Carter has shown no cause for not presenting the issue on direct appeal. We have made it clear that failure to raise an issue on direct review is a procedural default that can be overcome only by showing cause for the default and prejudice. See Campino v. United States, No. 91-2483 (2d Cir. June 22, 1992).
>
> (See ORDER, App. 5)

The findings of this ORDER are in error on two points: (1) the facts before the Court; and, (2) applicable Constitutional standards in that the law which governs the facts of this case clearly demonstrate that Carter's due

process rights were violated.

Carter clearly demonstrated "cause" as to why he did not, in fact, could not, raise his entrapment defense on direct appeal. Stated simply, the factual situation regarding Carter's entrapment were a matter of testimonial controversy prior to Stadel's recantations more than 20 months after the trial and eleven months after the appeal was decided.

Carter's jury trial was held from January 16, 1983 thru February 3, 1983 when the jury returned a verdict of guilty. The matter was appealed and affirmed on November 30, 1984.

Though Carter knew the true state of the facts and had testified to them at trial, such facts were a matter of dispute at the time of appeal due to the testimony of Stadel. What were the facts in controversy? First, the predisposition of Carter was a subject of contradictory testimony, and therefore, in factual, though not legal,

controversy.

Firstly, Stadel had supplied information to the RCMP and DEA which stated that he had personal knowledge of Carter being involved in drug transactions as a "kingpin" for the alleged Ganen organization. (App., 11-15) Carter denied this throughout his testimony. Carter's predisposition was therefore a matter of controversy for jury determination.

Secondly, Stadel testified at trial that Carter was the originator of the drug scheme including the price, purity and quantity of the drug transaction. At trial before the jury Stadel testified as follows:

> Q. Now, let me ask you a few questions about this March 12th meeting. First of all, did you discuss legitimate business with Mr. Carter during this meeting?
>
> A. Yes, sir. I discussed legitimate business also.
>
> * * * * *
>
> Q. Okay. Now, there is some discussion about one of his questions will be about purity;

was that about legitimate business?

A. No. That was about cocaine.

Q. And there was some mention of eighty-seven percent. I believe you mentioned that; is that correct?

A. Yes. That was -- that was what I was assured and to convey assurance that that would be the minimum percentage of purity of the cocaine that would be shipped.

Q. Who made that assurance to you?

A. Jerry Carter made that assurance to me. (Tr. IV, p. 71; Emp. added)

Carter testified about these same events in the following fashion at trial:

A. Mr. Stadel told me that he had a dinner meeting set up with this gentleman and that I was to assure this man that through people I know we could supply any amount of cocaine that this man wanted and Mr. Stadel said that he had met with a man in Miami by the name of Carlos Ganes and Carlos Ganes had promised cocaine to him at 46 thousand a kilo, and that was what Stadel had promised this cocaine to the man for and I was to met with this man and confirm that we could in fact deliver any amount of cocaine he wanted at 46 thousand dollars a

kilo and it had to be at least 87 percent pure. (Tr. IX, p. 122)

Again, it is clear that a factual controversy over the origination of the crime existed at the time of appeal. Was Carter to raise the argument that the Court was to decide whether or not the jury had the prerogative to decide which version of facts to believe? Controverted facts are a matter for the jury. Surely this point is not arguable.

On October 29, 1985, long after the direct appeal was over, Stadel was again questioned by AUSA Murphy about this very same incident. His response refuted his trial testimony and supported CARTER'S trial version of events:

Q. At the trial when we talked about the meeting at the Old Scott House Restaurant, Mr. Condon [Carter's trial lawyer] **tried** to get you to say that you were the one that suggested to Carter the price to be quoted for the cocaine, **and you denied that**; do you recall that?

A. I am sorry. Could you repeat that?

Q. Remember the meeting at the Old Scott House Restaurant?

A. Yes, sir.

* * * * *

Q. Now, Condon, at the trial was trying to get you to say that you were the one that put those figures into Carter's mouth, is that what happened?

A. Well, I am the one that put the figures into Carter's mouth.
(App., HT, p. 27-8; Emp. added)

In fact, Stadel goes on to state:

". . . -- the way things appeared to be were the way that I engineered them. The tapes, the conversations, I mean, everything, you know, everything that didn't look directed at drugs, I directed back, I mean I accumulated everything I could to make sure that this thing was going to happen. . . ."
(App., HT, p. 8)

Stadel, not only recanted the origination of the crime, but he also recanted on the story he fabricated regarding Carter's alleged drug history. At trial Carter was "a drug kingpin". On October 29, 1985 Stadel stated on

four (4) different occasions that he had known Carter for about a year and knew him to never be involved in drugs. (HT, 4, 7, 23, 26) In fact, to the surprise of AUSA Murphy, Stadel stated that the false information about Carter was supplied to him by DEA Agent Kenneth Peterson. (App., HT, 25-26)

In United States v. Ramsey, 726 F.2d 601 (10th Cir. 1984) the Court, dealing with recanted testimony, stated:

> "When a witness recants his testimony, presumably he will testify to the new version at a new trial. Thus, the recantation is substantial evidence." Id. @ 604

Just as important as recognizing the importance of Stadel's recanted testimony, is the recognition of the difficulty of soliciting such recantation through cross-examination:

> "While the defendant's counsel had the opportunity to cross-examine and to impeach Jackson [the government's key witness] at trial. It is unrealistic to assume that the defense attorney could have elicited the recantation at trial." Id. @ 604

Significantly, Stadel's recantation is a point by point collaboration of Carter's trial testimony and removes the controversy surrounding essential facts necessary for the successful advance of the due process entrapment defense. In refusing to recognize that the only way Carter could have presented the facts necessary to sustain his entrapment defense was for Stadel to provide a truthful version of the facts, the Second Circuit seems to assert in its ORDER that Carter was somehow responsible for Stadel's conscience not bothering him about the truth prior to October 29, 1985. This is "unrealistic" and fails to recognize, as did AUSA Murphy at the October 29, 1985 hearing, that Stadel had denied at trial what he admitted at this hearing.

Carter has certainly demonstrated "cause", if such is even necessary. Prejudice is evident on its face. In Khulman v. Wilson, 477 US 436, 91 L ed 364, 106 S.Ct. 2616, this Court, dealing with a habeas petition, stated what was necessary:

> ". . . the prisoner must "show a fair probability that, in light of all the evidence, including that alleged . . ., to have become available only after the trial, the trier of facts would have entertained a reasonable doubt of his guilt." Id. n. 17, @ 381

See also, Sanders v. United States, 373 US 1, 10 L Ed 2d 148, 83 S.Ct. 1068 (1963). What would a jury have thought if it had known Stadel coached the tapes? or lied about Carter's past? or "put words in Carter's mouth"? Not only has Stadel's recantation raised "reasonable doubt," but clearly demonstrates that Carter was, as he had claimed at trial, entrapped.

II.

> "Entrapment is indistinguishable from other law enforcement practices which the courts have held to violate due process. Entrapment is an affront to the basic concepts of justice. Where it exists, law enforcement techniques become contrary to the established law of the land as an impairment to due process. . . Were the courts to sanction the law enforcement activities committed in this case, it would transform the laws designed to promote the general welfare into a technique aimed at manufacturing disobedience in

> order to punish, **a concept thoroughly repugnant to constitutional principles.**" (Emp. added) U. S. v. Chisum, 312 F. Supp 1307 @ 1312 (C.D. CA 1970)

The entrapment defense has historically focused on two elements: inducement and predisposition; Sorrells v. U.S., 287 U.S. 435, 53 S. Ct. 210, 77 L. Ed 413 (1932); Sherman v U.S., 356 U.S. 369, 78 S. Ct. 819, 2 L. Ed 2d 848 (1958), and has been determined to be of constitutional dimension. Raly v. Ohio, 360 U.S. 440, 79 S. Ct. 1257.

In Sherman, supra, @ 384 the principle is stated:

> "The power of government is abused and directed to an end for which it was not constituted when employed to promote rather than detect crime and to bring about the downfall of those who, left to themselves, might well have obeyed the law."

The latest application of the entrapment principles was delivered by the Supreme Court in United States v. Jacobson, ____ U.S. ____, 112 S. Ct. 1535 (1992):

> ". . . there can be no dispute that the Government may use undercover agents to enforce the law. "It is well settled that the

fact that officers or employees of the Government merely afford opportunities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed **to catch those engaged in criminal enterprises.**" [cites omitted] In their zeal to enforce the law, however, Government agents **may not** originate a criminal design, **implant** in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute. [cites omitted] Where the Government has **induced** an individual to break the law and the defense of entrapment is at issue, as it was in this case, the prosecution must prove beyond reasonable doubt **that the defendant was disposed to commit the criminal act prior to first being approached by Government agents.**" Id. @ ____ (Emp. added)

Further:

"Because the Government overstepped the line between setting a trap for the "unwary innocent" and the "unwary criminal," [cite omitted] and as a matter of law failed to establish that the petitioner was independently predisposed to commit the crime for which he was arrested, we reverse . . ." Jacobson @ ___

The Jacobson Court provided the appropriate

guidelines in the following language:

> "In their zeal to enforce the law, however, Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute .... Where the Government has induced an individual to break the law and the defense of entrapment is at issue, as it was in this case, the prosecution must prove beyond a reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents." [cite omitted] Jacobson @ ___

The three point prohibition placed upon the government in "their zeal to enforce the law" are: (1) the government may not originate a criminal design; (2) implant in an innocent person's mind the disposition to commit a criminal act; and (3) then induce commission of the crime so that the government may prosecute.

Where did the criminal design originate in this case? According to all the witnesses at trial and at the October 29, 1985 hearing, the criminal design was

originated by the RCMP and DEA acting in concert with Stadel. (Tr. III, 146- 150; Tr. III, 56-57; Tr. IV, 175-6) However, Stadel's collaboration of this fact did not come out until the October 29, 1985 hearing. (App., HT, 13-14, 30-31)

Under questioning by the Court at the October 29, 1985 hearing, Stadel provides information about who set the direction:

> The Court: And -- well then, how did it move from Colson to Ganen?
>
> The Witness: Well, because Bobby Colson -- it was my understanding Bobby Colson was already suspect on some other charges that had been tapes in Ottawa, and the RCMP, as soon as they got a smell of something bigger, they decided that that was the thing to go after, ... (App., HT, p. 30-31; Emp. added)

Stadel, at the October 29, 1985 hearing, goes on to state:

> A. ... -- on my initial conversations with the Royal Canadian Mounted Police, . . . when I couldn't get to Juan Ganen and he trusted Jerry Carter's opinion about me, that was the

only route that I could go was to go through Jerry Carter.

(App., HT, p. 13-4)

It was Stadel, in conjunction with the RCMP and DEA, which manufactured the plan, price, purity and quantity of drug to be involved. It was Stadel's false testimony at trial, which he later recanted, that laid this matter at Carter's doorstep.

The second point of the three prong prohibition is that the government agents may not implant in an innocent person's mind the disposition to commit a criminal act. The government was aware, according to their agent Stadel, that Carter did not want to be involved in any drug deals. Additionally, it was the government, through its agent Stadel, that implanted the disposition in Carter's mind. Carter was not just "afforded an opportunity" -- he was plied upon, coached, threatened, etc.

In Jacobson, supra, the Court stated that "Petitioner's ready response to these solicitations cannot be

enough to establish beyond reasonable doubt that he was predisposed, prior to the Government acts intended to create predisposition, to commit the crime . . ." Id. at ___. Though Jacobson "readily responded", he had already been maneuvered by the government.

The Jacobson dissent points out that Jacobson "needed no Government agent to coax, threaten, or persuade him; no one played on his sympathies, friendship, or suggested that his committing the crime would further a greater good. In fact, no Government agent even contacted him face-to-face." Id. at ___. In Carter's case, his friendship that he was very loyal to (App., HT, p. 14-15; Tr. VIII, 42-43) was stressed upon and, according to the government, was central to the success of this case. Carter was coaxed and coached (Tr. IX, 71, 122; App., HT, 27-8). All prior to becoming involved. Stadel, though denied at trial, readily admits that it was he who took advantage of Carter's friendship and planted the idea in Carter's mind

and mouth.

As the Jacobson Court noted: ". . . "the Government [may not] pla[y] on the weaknesses of an innocent party and beguil[e] him into committing crimes which he otherwise would not have attempted." Id. at ___.

After Carter's reluctance and refusals had been overcome, he was later threatened because he was unable to perform. Stadel, according to his own testimony used the threats because wanted to make sure this thing came off. (App., HT, p. 4-5; 30-31; 18-22) All this time that the "squeeze" was on, it was known that Carter was not involved in the drug trade and had refused to get involved on at least four (4) previous occasions.

The Government, through the RCMP, DEA and Stadel, implanted the disposition in Carter to get involved -- though it does not now wish to take responsibility for its acts. However, AUSA Murphy conceded at the October 29, 1985 hearing that the jury was not appraised of extremely

vital facts concerning Carter's predisposition and coaching. (See App., HT, 14-15) In fact, he term the revelations which occurred at the hearing "very disturbing".

The third point of prohibited government conduct is that the government may not "induce the commission of the crime so that the government may prosecute. . . Where the Government has induced an individual to break the law and the defense of entrapment is at issue, . . ., the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by the Government agents." Jacobson, supra, at —.

Interestingly, the government admits to instructing Stadel to not record his conversations with Carter regarding their "legitimate" ongoing business activity but to only record his conversations with Carter regarding the drug deal which the government had manufactured. Absent government origination, introduction and inducement, they

knew Carter would simply continue on with his legitimate business activities. Had it not been for Stadel's deceptive and recanted trial testimony, so would have the Court and jury. Carter has invested substantial time and money, one year and $25,000, in his legitimate business deals with Stadel. This very legitimacy, as well as Carter's loyalty to his friendships, were used by the government to lure, persuade, coax and pressure Carter to the government's drug inducement.

> "Rational jurors could not say beyond reasonable doubt that petitioner possessed the requisite predisposition prior to the Government's investigation and that it existed independently of the Government's many and varied approaches. . . . Law enforcement officials go too far when they "implant in the mind of an innocent person the disposition to commit the offense and induce its commission in order that they may prosecute. . . . When the Government's quest for convictions leads to the apprehension of an otherwise law-abiding citizen who, if left to his own devices, likely would have never run afoul of the law, the courts should intervene. Because . . . the prosecution failed, as a matter of law, to adduce

evidence to support the jury verdict that the petitioner was predisposed, independent of the Government's acts and beyond a reasonable doubt, . . . we reverse . . . ." Id. at ___

CONCLUSION

This case involves a substantial federal question and Carter request this Court to grant his writ and to call up the record.

Done this the 21ST day of January, 1993.

Jerry G. Carter

JERRY G. CARTER
PRO PER
P. O. BOX 614
HANCEVILLE, AL 35077
205-352-6036

CERTIFICATE OF SERVICE

I hereby certify that I have served three copies of the foregoing upon the Solicitor General of the United States, Department of Justice, Washington, D.C. 20530 and upon the United States Attorney's Office, Western District of New York, 502 United States Courthouse, Buffalo, New York 14202 first class United States mail postage pre-paid.

Done this the 21ST day of January, 1993.

Jerry G. Carter

Jerry G. Carter

NO: _____

IN THE
SUPREME COURT OF THE UNITED STATES

SPRING TERM 1993

JERRY G. CARTER,

PETITIONER,

V.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPENDIX

JERRY G. CARTER
PRO PER
P. O. BOX 614
HANCEVILLE, AL 35077
205-352-6036

APPENDIX

DISTRICT COURT'S ORDER OF DENIAL OF PETITION 1

2ND CIRCUIT COURT OF APPEALS ORDER OF DENIAL OF PETITION 3

2ND CIRCUIT COURT OF APPEALS DENIAL OF EN BANC PETITION 6

STADEL'S AFFIDAVIT 8

REPORT OF RCMP LOWE DATED FEBRUARY 23, 1983 11

REPORT OF DEA ROBERT JOURA RAC DATED MAY 10, 1983 12

REPORT OF RMCP LOWE DATED FEBRUARY 22, 1983 13

REPORT OF DEA ROBINSON DATED FEBRUARY 24, 1983 15

TESTIMONY OF ROBERT STADEL AT SENTENCE REDUCTION HEARING DATED OCTOBER 29, 1985, (WHERE "HT" FOLLOWED BY A PAGE NUMBER IS REFERENCED, IT MEANS THE OCTOBER 29, 1985 HEARING AND IS FOUND IN THE APPENDIX IN ORIGINAL NUMERICAL FORM)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

-vs- CR-83-84C

(CIV-91-86C)

JERRY G. CARTER,

Defendant-Petitioner.

On February 15, 1991, the petitioner filed a motion pursuant to 28 U.S.C. @ 2255 to vacate or set aside his sentence and conviction. On April 10, 1991, the United States filed an extensive response which set forth the history of this matter in detail.

After the petitioner was convicted, a hearing was held on the petitioner's application for a new trial. The application for a new trial was denied. The conviction was affirmed by the United States Court of Appeals for the

Second Circuit, and a petition for certiorari to the Supreme court of the United States was denied.

The claim by petitioner of "outrageous government conduct" carefully reviewed previously by the court and rejected. Furthermore, the arguments now pending before the court were reviewed previously on a Rule 35 application and subsequent motions for a new trial. The denial of relief to the petitioner was reviewed by the Court of Appeals and denied.

On the record before the court, the application of petitioner for relief is denied.

So ordered.

JOHN T. CURTIN

United States District Judge

Dated: February 20, 1992

JON 91-cv-86 Curtin

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 2nd day of September, one thousand nine hundred and ninety-two.

PRESENT: HONORABLE WILFRED FEINBERG,

HONORABLE JON O. NEWMAN,

HONORABLE RICHARD J.CARDAMONE,

Circuit Judges.

JERRY G. CARTER,

Petitioner-Appellant,

v. 92-2149

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Appeal from the United States District Court for the

Western District of New York (John T. Curtin, Judge).

This cause came on to be heard on the transcript of record from the United States District Court for the Western District of New York and was taken on submission.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the District Court be and it hereby is AFFIRMED.

Carter appeals from the February 27, 1992, order denying his petition under 28 U.S.C. S 2255 (1988) to challenge his 1984 conviction for narcotics offenses. We have previously considered challenges to his conviction on direct review, United States v. Paternia-Vergara, 749 F.2d 993 (2d Cir. 1984), cert. denied, 105 S. Ct. 1197 (1985), and on appeal from the denial of a motion for a new trial under Fed. R. Crim. P. 33, United States v. Carter, 847 F.2d 837 (2d Cir. 1988).

Carter's current claim is that the Government's actions in affording him an opportunity to commit the offenses constitutes outrageous conduct barred by the Due Process Clause. Whether or not this contention was comprehended within his prior challenges, it is not available for consideration on this collateral attack because Carter has shown no cause for not presenting the issue on his direct appeal. We have made it clear that f allure to raise an issue on direct review is a procedural default that can be overcome only by showing cause for the default and prejudice. See Campino v. United States, No. 91-2483 (2d Cir. June 22, 1992).

N.B. THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND SHOULD NOT BE CITED OR OTHERWISE RELIED UPON IN UNRELATED CASES BEFORE THIS OR ANY OTHER COURT.

Circuit Judges.

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

OCT 26 1992

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of October one thousand nine hundred and ninety-two.

JERRY G. CARTER,

Petitioner-Appellant,

DOCKET NUMBER:92-2149

V.

UNITED STATES OF AMERICA,

Defendant-Appellee.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by appellant Jerry Carter,

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

ELAINE B. GOLDSMITH

Clerk

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

---------- x

UNITED STATES OF AMERICA

- against AFFIDAVIT

JERRY CARTER, Cr. No. CR 83-84

Defendant.

---------- x

STATE OF NEW YORK):

COUNTY OF NEW YORK): ss.:

ROBERT STADEL being duly sworn, deposes and says:

1. I am writing this affidavit in the office of the attorney for Jerry Carter, Lawrence S. Goldman, Esq. I am writing of my own free will and no pressure has been brought to make me sign this affidavit.

2. I contacted Mr. Carter and then his attorneys of my

own accord in an effort to bring out matters which were not revealed at the trial. Assistant United States Attorney Matthew J. Murphy, III, is aware that I am meeting with Mr., Carter's attorneys.

3. I was the key witness in the trial of Jerry Carter. I testified, to the best of my ability, honestly and fully. However, certain information which I possessed about Mr. Carter was not brought out by either the government or the defense.

4. I believe that Jerry Carter had no prior dealings in narcotics before his involvement in this case.

5. I believe that Jerry Carter was pressured and coerced into the narcotics conspiracy in this case. I implored him to vouch for me with Mr. Ganem since otherwise, I believed, Mr. Ganem would not deal with me. I believe that Mr. Carter became involved because of a desire to help me out of a desperate financial situation and out of fear that if the narcotics did not occur, I and my family -- and Mr. Carter also -- might be killed.

6. I respectfully ask Your Honor to consider this affidavit and reduce Mr. Carter's sentence. I would like the opportunity to appear before Your Honor at a hearing on Mr. Carter's motion to reduce his sentence so, that I might fully explain Mr. Carter's activities and state of mind, as I knew it to be, throughout the events that led to his arrest.

Robert Stadel

Sworn to before me this

1st day of July, 1985.

Notary Public

RCMP - Report of Cpl. Lowe - 23 Feb 1983

Cpl. Froud & myself met with source at Holiday Inn, Eglington Ave. E. Discussed possibility of having source introduce a member to Jerry Carter. Source reluctant at first but then agreed it would be the best way to approach this. Source was asked if he would contact Carter and see if Carter would come to Toronto to be introduced and to discuss cocaine deal. Source agreed to contact Carter.

R. G. Lowe, Cpl.

DEA Report of Robert Joura, RAC - 10 May 83

SC2-83-0013 was responsible for the above mentioned investigation which resulted in the seizure of 33 pounds of cocaine, two (2) automobiles and four (4) defendants. This is the largest cocaine seizure ever made in the Western District of New York. The success of this case was due, in no small part, to the close personal relationship between the informant and Defendant Jerry Carter which made it essential for SC2-83-0013 to be present during all undercover contacts.

Robert J. Joura, RAC

RCMP Drug Enforcement Bureau Report of 22 Feb 83

On the above date a source was debriefed by Cpl. LOWE and Cpl. FROUD. The following is the information this source supplied.

8. The source stated that Jerry CARTER of Athens, Alabama is a multi-kilo distributor for the GANEM organization. He supposedly has organized crime ties. CARTER is the person the source would contact to initiate any transaction with the GANEMS.

9. The source has stated that he is willing to introduce an operator to this organization and is willing to testify against this organization.

83-02-28

10. On the above date, Cpl. LOWE, and Cpl. FROUD met with S/A Ken PETERSON D.E.A. and S/A Bob Joura, D.E.A. in Buffalo, N.Y. and discussed the above information. They stated they were interested in pursuing this investigation, but only if the source can talk CARTER

into coming into Buffalo to be introduced to an agent. D.E.A. will not approve the expenditure of any monies until an agent is introduced to CARTER to corroborate the source's information.

R. G. LOWE, Cpl.

DEA Report of James Robinson - 24 Feb 83

SYNOPSIS:

On February 22, 1983 Deputy James S. Robinson, Buffalo Resident Office Task Force, Cpls. Robert Lowe and Gerald Froud, RCMP, interviewed Robert Stadel, DOB 5/25/49 in Toronto, Ontario, Canada Re: The Cocaine Trafficking of Juan, Sol and Renaldo GANEM between Miami, Florida and Canada.

6. Stadel stated Jerry CARTER of Athens, Alabama is a multi-kilo distributor of cocaine in the Alabama area for the GANEM organization. According to Stadel Carter also has organized crime ties.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

JERRY CARTER,

Defendant.

PROCEEDINGS:	HEARING.
BEFORE:	HON. JOHN T. CURTIN, USDJ.
LOCATION:	U.S. DISTRICT COURT, Buffalo, N.Y.
DATE:	October 29, 1985.
REPORTER:	EUGENE R. BECKSTEIN.
APPEARANCES:	SALVATORE R. MARTOCHE, United States Attorney, BY: MATTHEW J. MURPHY III, ESQ., Assistant United States Attorney, Appearing on behalf of the

Government.

MR. GOLDMAN, ESQ.,

Appearing on behalf of the

Defendant.

THE WITNESS: S-T-A-D-E-L. Do I just begin?

THE COURT: Yes, Mr. Stadel, when you're ready.

THE WITNESS: Okay. Your Honor, the reason that I requested to come back and speak on behalf of Jerry Carter is that my fee l lings on this are that a lot of things that involved Jerry Carter's frame of mind and what brought this situation to a head was not brought out in the trial, either by the defense attorneys or by the prosecutors, ana that in order to say achieve what happened with respect to Juan Ganem and the two other associates that he had, the only possible way of getting to these people were by way of Jerry Carter, who was -- I knew him for approximately a year prior to this incident, but I also knew him never to be a drinker, never to be involved -in any drugs, and to be involved in some various business situations with myself that we were trying to be or would be entrepreneurs, and we were just floundering for money. I was becoming

very desperate for money and ran into a situation, as I stated in the trial, with a fellow named Bobby Colson, who threatened my life and my family's life as a result of knowing Juan Ganem, and thought that I had done something behind his back, which definitely wasn't the case, and when I tried to arrange something to have something done by Bobby Colson, the RCMP suggested the best way of going about it would be through Juan Ganem, and injoined the Drug Enforcement Administration at that time in pursuit of this, and when Juan Ganem refused to deal with me, subsequently I went to or subsequently I went to Jerry Carter and asked him for his assistance. I made it very clear to Jerry that I was under tremendous financial pressure. Jerry did not want -- Jerry did not want to get involved. I pleaded with him., I did everything I could and then tried to get Jerry out of it at the end, and it had just gone too far and I

commission, and while he was in Acapulco, I called him a multitude of times to try and hurry this thing up, and subsequently he came back, I pushed on him and pushed on him, and he came back and he ended up, as we all know, now in prison. My true belief is that if this wouldn't have happened, he would have never been involved in anything, and I of course have no way of determining that for a fact, but the fact is I know he never was up until that time. And he did everything that he could to help me. I tried to borrow funds from him, and he -- I thought that he wasn't lending it to me. I didn't do it as a vendetta, but I didn't also know until the trial came out that he was just as broke as I was, but he did not get involved. I mean maybe the money was an incentive at the end, but I still don't believe that he was there along with me, and when it happened he went and I didn't, and I don't how else to summarize it, other

than that I know him, it has been eating at me, I have relived this thing ten thousand times since this happened, and he just should not be there. What -- the way things appeared to be were. the way that I engineered them. The tapes the conversations, I mean, everything, you know, everything that didn't look directed at drugs, I directed back, I mean I accumulated everything I could to make sure that this thing was going to happen. He was definitely under the belief that all of us were going to come under physical harm if it didn't happen, and he just was not that kind of a person. As I say, he wasn't my best friend, and I am -- it is not a matter that, you know, it is something that I have got to do, and I am -- I am looking to be absolved from this thing, you know, but it is not right that he is there, and I haven't been able to do anything else, and I phoned Mr. Condon I think approximately a year ago to try and

arrange something, and until I finally found out -- Mr. Murphy told me where he was, and when I reached him by telephone at the prison, he told me who his attorneys were, and I got a hold of Mr. Goldman, I contacted Mr. Murphy and asked him if it was alright with him if I went to see Mr. Goldman and speak to him. He said it was. I went and spoke to him, and this is how we've arrived here. I don't know what else to have. I feel like I should have two hours.

THE COURT: Mr. Goldman

MR. GOLDMAN: If I may supplement with just a few questions, your Honor.

THE COURT: Yes.

EXAMINATION BY MR. GOLDMAN:

Q Perhaps put this in -- prior to meeting Mr. Carter, had you had any knowledge or involvement with Mr. Ganem with respect to drugs?

A No. I had found out about Mr. Ganem's involvement with drugs prior to meeting Jerry Carter, yes, I knew of it, but I personally had

never been in any involvement with him. I knew that he was -- I was sent down to meet him because I understood that he was very wealthy, and after meeting him and meeting several of his associates, I found out why back once again through Bobby Colson that he was involved in cocaine trafficking.

Q You learned that from Mr. Colson?

A Bobby Colson, yes.

Q Did Mr. Colson mention Mr. Carter being involved with him?

A No. Bobby Colson never knew Jerry Carter. Jerry Carter was only -- he was verbally asked to go up and look at these oil and gas deals that we were trying to sell Mr. Ganem in Columbus, Ohio, and that is the first time I met him is when-he checked in with an associate in Columbus, Ohio. Now, why -- there came a time when you asked Mr. Cart er to assist you in securing drugs; is that correct?

A I am sorry?

Q There came a time when you asked Mr. Carter to help you get some drugs?

A Yes, sir.

Q Why did you ask him?

A I asked him, because I was -- I had -- was threatened by Bobby Colson. Jerry Carter and his associate came up on a commodities venture that we were working on into Toronto, and Bobby Colson only assumed that because he had heard about Jerry Carter and Juan Ganem knowing each other that we were doing some kind of a deal, and he went around and he took my associate, Fred Colson, who was Bobby Colson's uncle, and pinned him up against the wall of a hotel and threatened his life, and came around with a pair of scissors the next morning into a restaurant and threatened my life, and threatened my wife and baby.

Q Let me ask you, why did you, rather than why you -- let me -- withdrawn. Let me refine my question. Rather than ask you why you tried to get involved in narcotics, why did you go to Mr. Carter, as opposed to Mr. Ganem directly?

A He picked up the phone from Miami and called Jerry Carter. I got on the phone with Jerry and Jerry was very reluctant to even discuss anything like that. When I was back once again in Toronto, I was with Corporal Lowe and Corporal Froud, and I phoned Jerry Carter with a taping

device and asked Jerry Carter if he would like to get involved with me on this thing.

Q What was his initial reaction?

A He was -- there was a pause, he was 'reluctant, and to the best of my recollection, this is so long ago now, but he, you know, I tried to stress to him very cryptically that there would be a lot of money in this for all of us, and of course on my follow-up conversations with him told him that, you know, there was all sorts of people involved, law enforcement people, Mafia people.

Q Well, when-you spoke to him -- I am talking about the initial conversations, if I may, did you discuss your only financial condition?

A Oh, definitely.

Q What did you tell him about your condition?

A I told him I was financially devastated. I told him I was in abject poverty, I was losing my car, I was

being ready to be evicted from my apartment, I had no money, I think about a six or eight week old baby at the time. I asked him for a loan. It hurt him. He phoned me back about three times to tell me that, you know, he was trying to do it, he was trying to get some money out of.a company that he did some work for in New

York. As I say, I didn't realize that he was as broke as I was or close to it.

Q What was your purpose in telling him about your disastrous financial condition?

A He was one of the few people that I was working with. I just was not able to move around an more, and then I asked him for some assistance. I thought if, you know, it appeared. like things were going better for him, and I asked him for some financial help, and --

Q Did you mention your financial condition in connection with your efforts to get him to help you find a source of narcotics?

A I am sorry?

Q Did you mention your terrible financial shape in connection with your attempt to get him to help you find a source for cocaine?

A Absolutely I did. I will reiterate, he was he was

reluctant and I was persistent, and my only salvation that I could see was being moved. I was -- on my initial conversations with the Royal Canadian Mounted Police, the first thing that was mentioned with this was relocation, and I knew my salvation away from Bobby Colson was-relocation,. and when I couldn't get to Juan Ganem and he

trusted Jerry Carter's opinion about me, that was the only route that I could go was to go through Jerry Carter.

Q Now, did there come time when you told Mr. Carter or discussed what might happen if the deal did not go through?

A Yes.

Q What did you tell him?

A I told him that there was a possibility -- it was a last ditch effort on my part. I told him there was a possibility that we could both be killed.

Q That was by the person purported to being Nick Dasti?

A Purporting to be Mafia. I wasn't instructed by the RCMP. I just went that far at that point. In my opinion, he was more afraid at the end than I was.

Q Well, can you, in relative --- you said you begged Mr. Carter. Can you give in what you knew of Mr.

Carter at the time of your dealings with him, characterize what led him, just generally, to get involved in this -- in these transactions?

A I just -- I just told him that I was broke. Jerry was very honorable. He had a very strong allegiance toward our partnership, even though it

was -- we had just had a tacit agreement on most things. I'd send him away on a deal, one of our largest deals, and when someone tried to backstab me on the deal, he called me from down south to let me know what was going on, to keep me posted when he could have picked up the money himself. it was just a situation that got messed up, and drew him in and he trusted me, and this is the way it ended up.

MR. GOLDMAN: I have nothing further. Thank you.

THE COURT: All right. Mr. Murphy.

EXAMINATION BY MR. MURPHY:

Q Mr. Stadel, is there any doubt in your mind that Mr. Carter knew that what he was involved with was a multi-kilo conspiracy to distribute cocaine?

A I think he knew what it was, yes, I think he knew.

Q But you feel bad because you betrayed your, friendship for him?

A No, sir, that is not what I am trying to say.

What happened was he was -- he was under at least as much pressure or more than I was towards the

giving your opening statement, you were allowed to give your impression. What I would like to ask you is about the specific facts, the specific instances. How many times did you tell him that there was a death threat on?

A I recall once.

Q Where at?

A I recall telling him in Miami.

Q Where?

A At the Marriott in Miami, at the airport in Miami.

Q The day that the gram of cocaine was delivered?

A No, sir. That was in Fort Lauderdale. This was in Miami when I was sent down by the D.E.A. and the RCMP to meet with him and Juan Ganem down in the Miami Marriott.

Q What did you tell him?

A Juan Ganem had left to go out, because he was radioing a plane allegedly, and I told Jerry that I

said if this thing doesn't come off, I said we are both going to be in a life and death situation right now. I said I am terrified at what the consequences are going to be.

Q That is the only occasion that you said that?

A It could have come up again. I was pressing so

hard toward the end, I don't know what I said or what the inflexion was in my voice. All I know is he was as panicked as I was.

Q Did you say -- did you talk -- tell him about it being a life and death situation before that April meeting down in the Miami Marriott?

A Not sir, not the best of my recollection. Everything at that point was going very smooth.

Q Now, Mr. Carter testified at trial, didn't he?

A As far as I know. I wasn't present.

Q He didn't say anything about it at trial. Do you have any explanation for that?

A No, I haven't. I haven't read -- I haven't read anything that he testified to.

Q You are telling us that you said that it was a live and death situation. Don't you think that would have made an impression on Mr. Carter?

A Well, yes, sir, it is very possible that it would have.

I can't speak for Mr. Carter.

Q Yet why didn't Mr. Carter tell us about it at the criminal trial?

A I don't know. I don't know why. I don't know why he didn't say anything if he didn't, and I don't know why those questions weren't asked of me at the trial.

Q Didn't Mr. Condon ask you at the trial if you made threats or communicated threats about Nick Dasti or the Canadian Mafia?

A As a matter of fact, I think he did and I think I corroborated that, yes, I did say that.

Q Didn't you deny that you made any -- or that there was any discussion about life and death threats?

A No, sir. I don't think so. I think I remember telling him that Nick Dasti's father had passed away, and that he was in charge now, and that this thing had to go off or else.

Q Did you make threats to Jerry Carter when he came up to Toronto and you had dinner at the Old Scott House Restaurant?

A No.

Q You didn't threaten him then?

A No.

Q Or tell him about how it was a life and death

situation?

A No, not at that point.

Q Well, Carter learned about the deal with Froud involving cocaine at that time or shortly before that time, didn't he?

A Yes, he did.

Q So what was his motivation back in March for getting involved in this deal?

A His motivation in March was my financial situation, and that is -- that happened subsequent to me calling him up and pleading with him to get involved with me on this thing. He knew --

Q Those were the first couple of calls that you made to him after you contacted the RCMP?

A Yes, sir.

Q You made tapes of those calls?

A Yes, sir. We made tapes at a payphone. Corporal Froud and Corporal Lowe were with me.

Q Those were played at trial, too, weren't they?

A They weren't played in front of me. I don't know, sir. There is only one tape that was played in front of me at the trial.

Q Wasn't Mr. Carter enthusiastic about this deal with Nick Dasti after his trip up to Toronto?

A Mr. Carter wasn't enthusiastic.

Q Did he say he was going to give one hundred percent of his attention to it as soon as he returned to Alabama; don't you remember him saying that on the tapes?

A No, sir, I don't remember him saying that.

Q Would you agree with me if I told you that that is what he did say?

A If you -- if you -- if that is what he said, then, yes, I would agree. I am not going to --

Q Does that sound like somebody who is desperate or entrapped into getting himself involved in a narcotics conspiracy?

A What it sounds to me, if this is the answer to your question, what it sounds to me is that say, I pleaded with him to help me out, and told somebody that was trying to help me out. As I don't think he ever physically had any intention -- any intention of physically-ever getting involved in anything, and as the pressure came more on me, okay, I placed more on him.

Q Well, you were involved in a lot of big business deals prior to your involvement with the RCMP, weren't you, Mr. Stadel?

A Yes.

Q And there is always pressure and stress associated with putting together a big business deal, isn't there?

A Sometimes there is, yes.

A We were splitting it evenly, but the numbers were, nine thousand a kilo, not ten thousand.

Q And you were talking about shipping up hundreds of kilos on a monthly basis; isn't that right?

A Yes, sir.

Q And he was going to split nine thousand dollars for each kilo that was sent up?

Q Couldn't that have been the stress or the pressure that Carter was dealing with, trying to put this real estate deal together that you and he were talking about?

A No, sir.

Q Why not, how are you so sure?

A Because I knew him well enough to know what was going on. I knew him well enough to know that he didn't drink, that he wasn't involved in drugs, and that he wasn't that greedy.

Q Didn't -- didn't you and he talk about splitting up ten thousand dollars a piece for each kilo that was shipped up to Canada?

A Yes, sir.

Q You were going to get five and he was going to get five?

A No. As a matter of fact, it was five and four.

Q Who was going to get the four?

you're not trying to be a witness, you're trying to take the role of the jury and decide guilt or innocence; isn't that what you're doing?

A No, sir. I came here -- I came -- I put some money together to come here, okay, and I endeavored to-do this about a year ago, and I also wanted to.write Judge Curtin a letter prior to that. I was in touch with you many, many times, okay. I did not know what to do about this situation. I expressed to you at the time of the trial, okay, about how I felt about Carter. I -- There was nothing that I could do. I did not want to testify when the trial came up, when I was -- when I was placed in security.

Q Didn't you tell me when we were preparing for trial that Carter did have prior involvements in cocaine dealing?

A If I can quantify that, I will answer that. I said to you that I was told by Kenny Peterson that he was

stopped with a fellow named Martin Milo in Tennessee with a kilo of cocaine, and Ken said, so I don't think, he said, you should feel any guilt whatsoever with respect to this, because he said he is a guy that would sell kids, quote, unquote. So I told you what was told to

me.

Q You didn't qualify it at the time, did you?

A I am not sure whether I did or not, but I certainly assumed, if not, that you had better access of checking that out than I did.

Q Didn't you tell me when we were preparing for the trial that even before your involvement with the RCMP, when you were down in Alabama visiting the oil wells or the refining plant, that Carter's family was associated with -- that Carter was talking about cocaine use at that time?

A I am sorry. could you repeat that?

Q You had gone down to Alabama to visit Carter's family business even before your involvement with the RCMP, didn't you?

A Yes, sir.

Q Didn't you -- didn't Carter talk to you about cocaine use and cocaine distribution when you were

down there?

A No, sir.

Q You didn't tell me that prior to trial?

A No, sir, no. Jerry Carter was not -- I know for a fact, or it was certainly never brought out in front of me, that he was ever involved with any cocaine. He knew Juan Ganem. In my opinion, if

I can say this, in my opinion, if he would have been involved in cocaine, he wouldn't have been arrested. He certainly wouldn't have been as broke as I was.

Q At the trial when we talked about the meeting at the Old Scott House Restaurant, Mr. Condon tried to get you to say that you were the one that suggested to Carter the price to be quoted for the cocaine, and you denied that; do you recall that?

A I am sorry. Could you repeat that?

Q Remember the meeting at the Old Scott House Restaurant?

A Yes, sir.

Q Carter was quoting a price of thirty thousand dollars per kilo for the cocaine, wasn't he?

A No, sir. The price quoted was forty-six thousand dollars.

Q Forty-six thousand dollars per kilo, twenty-five to thirty kilos?

A I can't remember the quantity at the time. I know it elevated.

Q Now, Condon, at the trial, was trying to get you to say that you were the ones that put those figures into Carter's mouth, is that what

happened?

A Well, I am the one that put the figures into Carter's mouth.

Q You told Carter to quote a price of forty-six thousand dollars per kilo?

A I am the one that brought up at the Old Scott House, if I recall correctly, or with Jerry in the hotel room that the going price in Miami that time, which I was told by Juan Ganem, was forty-six thousand dollars a kilo.

Q You deny that Carter talked to Ganem prior to his meeting at the Old Scott House Restaurant?

A I don't know whether he did or not. To be quite honest with you, I don't think he did. I really don't think he did. He flew up and met with me on that and another business deal.

Q Even though in his prior telephone conversations he indicated that he had talked to Ganem prior to him

coming up?

A I don't recall all of the tapes.

THE COURT: Mr. Stadel, while Mr. Murphy is looking, if I understand your position, you say that it is your opinion that Mr. Carter acted here out of compassion for your difficulties?

were in terrible financial troubles.

THE WITNESS: Yes, sir.

THE COURT: Did you tell him about the Colson meeting, too?

THE WITNESS: He was aware of that. He was there when Colson put his uncle, my partner, up against the wall at the hotel.

THE COURT: Did he ever suggest to you that you should go to the authorities about Colson and make some complaint or charge?

THE WITNESS: No, sir. His attitude was more, of --

THE COURT: Did that ever enter your mind?

THE WITNESS: It entered mine, I did go to the authorities.

THE COURT: About Colson?

THE WITNESS: Yes, sir. That is how this all began.

THE COURT: And -- well then, how did it move from Colson to Ganem?

THE WITNESS: Well, because Bobby Colson -- it was my understanding Bobby Colson was already suspect on some other charges that had been tapes in Ottawa, and the

RCMP, as soon as they got a smell of something much bigger, they decided that that was the thing to go after, and as I say, in the very initial discussions, even before I met Corporal Froud which was on my second meeting they were talking to me about relocation, and it was asked to me by an ex-narcotics agents, Will Huntly, at least three times, where would we like to be relocated.

THE COURT: All right.

THE WITNESS: We could be relocated anywhere.

THE COURT: Let me ask you this. So then you went to Carter, you knew that Carter was friendly with Ganem; true?

THE WITNESS: Yes, sir.

THE COURT: And you told him all of this stuff

about being impoverished and being fearful of Colson?

THE WITNESS: Yes, sir.

THE COURT: Did he ever suggest to you that there were other things that that could be done to get you out of your financial difficulties?